



May 2, 2019

VIA ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: WC Docket Nos. 10-90 and 09-197

Dear Ms. Dortch:

NTCA – The Rural Broadband Association (“NTCA”) hereby files this letter to urge denial of Viasat’s Petition for Reconsideration of the process for measuring compliance with a mean opinion score of 4 (“MOS4”) for latency.¹

As other parties have observed, Viasat was well aware of the applicable performance testing requirements when choosing to participate in the Connect America Fund (“CAF”) Phase II auction.² Indeed, the course of events here is similar to that in the Rural Broadband Experiments, wherein Viasat was aware of the performance requirements beforehand but requested a waiver of them after participating in that process. The Commission promptly dismissed Viasat’s request for waiver in that context, stating that changing the requirements after the auction concluded would be “prejudicial to the integrity of the competitive bidding process.”³

¹ See Petition for Reconsideration of Viasat, Inc., WC Docket No. 10-90 (filed Sep. 19, 2018) (“Viasat PFR”).

² See Letter from Todd B. Lantor, Counsel to Conexon, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission (the “Commission”), WC Docket Nos. 10-90, 14-58 and 09-197 (filed March 25, 2019); Letter from Mike Saperstein, Vice Pres., Law & Policy, USTelecom, to Marlene H. Dortch, Secretary, Commission, WC Docket No. 10-90 (filed Apr. 2, 2019); see also Reply of Viasat in Support of its Petition for Reconsideration, WC Docket No. 10-90 (filed Nov. 19, 2018), at 2-4 (describing Viasat’s concerns with latency performance testing standards and its decision to participate in the CAF Phase II auction nonetheless).

³ *Wireline Competition Bureau Announces Entities Provisionally Selected for Rural Broadband Experiments: Sets Deadlines for Submission of Additional Information*, WC Docket No. 10-90, Public Notice, 29 FCC Rcd 14684 (Wireline Comp. Bur. 2014); accord *Opposition of Hughes Network Systems, LLC*, WC Docket No. 09-197 (filed March 6, 2019) (“Hughes Opposition”), at 4 (“[T]he Performance Metrics Order’s decision to limit high-latency bidders in the nationwide CAF-II auction to a real-world variant of the ITU-T P.800 conversational-opinion test effectively imposed a gating criterion on auction participation by geostationary satellite providers and cannot be modified after the fact without totally undermining the results of the auction.”).

Now, after winning support in the CAF Phase II auction, Viasat has requested the Commission effectively modify the MOS4 standard *as expressly articulated by the Commission prior to the auction*⁴ by modifying how compliance with that standard will be assessed. Specifically, Viasat has requested the specific Commission-defined process for verifying MOS4 compliance as established in mid-2018 be modified to permit Viasat's service to be measured via laboratory testing rather than real world testing that captures and reflects the consumer experience.

In essence, Viasat appears to be indicating that it can meet this standard only if compliance is tested differently than the rules expressly contemplated when the auction took place. By contrast, Hughes has consistently and forthrightly noted that it is unlikely any geostationary satellite provider could meet the MOS4 requirements as articulated prior to the auction.⁵ Indeed, based on this determination, Hughes chose not to participate in the CAF Phase II auction.⁶ Thus, to change the "real world" testing requirement after the auction has concluded would be prejudicial to Hughes and – more importantly – harmful to the rural consumers who must rely upon the service in question when they wish to have conversations in the "real world."

As justification for its requested modification, Viasat argues that the procedures for MOS4 testing adopted by the Commission "cannot be reasonably or effectively utilized to conduct performance testing of satellite broadband service" because the underlying procedures do not cover real world testing as required by the Commission.⁷ Thus, at bottom, Viasat seems to be claiming that it can satisfy the Commission's prescribed standard for higher latency services only as long as it does not have to do so in the "real world" conditions that the Commission clearly expected in the *Performance Metrics Order*. Yet all other providers that participated and prevailed in the CAF Phase II auction are required to conduct real world testing, and the performance testing order could not have been clearer in indicating that such testing would be expected of *all* providers.⁸ Accordingly, as a matter of technological neutrality, Viasat should

⁴ *Connect America Fund*, WC Docket No. 10-90, 33 FCC Rcd 6509, 6513 and 6525-26 (Wireline Comp Bur., *et al.* 2018) ("Performance Metrics Order"), at ¶¶ 41-46.

⁵ *See, e.g.*, Letter from Jennifer A. Manner, Senior Vice President, Regulatory Affairs, Hughes Network Systems, LLC, to Marlene H. Dortch, Secretary, Commission, WC Docket No. 09-197 (filed March 21, 2019) ("an ITU-T computational tool raises serious questions about whether a geostationary satellite network would be able to meet this particular standard under any circumstances"); *Hughes Opposition*, at 2 ("[E]ven under the more ideal laboratory conditions described in the ITU-T P.800 standard, a network with 600 ms of round-trip latency – which is an inalterable characteristic of geostationary satellite service such as Viasat's – can produce a best-case MOS conversational score of 3.72.").

⁶ *See, e.g.*, Letter from Jennifer A. Manner, Senior Vice President, Regulatory Affairs, Hughes Network Systems, LLC, to Marlene H. Dortch, Secretary, Commission, WC Docket No. 10-90 (filed Dec. 14, 2018).

⁷ Viasat PFR, at 2.

⁸ *See Performance Metrics Order*, 33 FCC Rcd at 6513 and 6525-26, ¶¶ 10 and 45-46. It is also worth noting that additional accommodations were made to enable the contemplated testing for higher-latency bids, including a scaled number of locations and national testing.

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not be singularly and uniquely excluded from this requirement. All providers face challenges in the “real world,” including weather and topographical barriers. Moreover, and more importantly, those same challenges will confront users of the supported services when they try to make voice calls, which could include calls to 911. Thus, it is critical as a matter of both public policy *and* public safety for voice service to perform reliably *in the real world*.⁹

The Commission established special latency requirements for satellite providers to ensure consumers would receive reliable services capable of real-time two-way communications, while still allowing these higher latency services to participate in the auction under the auspices of “technological neutrality.” To lessen or otherwise modify these requirements for one provider after the auction has concluded would undermine the auction process – and, more importantly, to do so in this specific instance would harm those “real world” consumers who may be required to subscribe to the supported service without confidence that they may be able to make or receive (or even just understand) voice calls at any given time. Accordingly, for the reasons stated herein, the Commission should deny Viasat’s Petition for Reconsideration.

Thank you for your attention to this correspondence. Pursuant to Section 1.1206 of the Commission’s rules, a copy of this letter is being filed via ECFS. Please contact the undersigned with any questions.

Respectfully submitted,

/s/ Michael R. Romano

Michael Romano

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⁹ *Contra* Reply to Opposition by Viasat Carrier Services, LLC, WC Docket No. 09-197 (filed March 13, 2019), at 6 (“In particular, to require that [Viasat] (as a new entrant seeking to provide CAF-funded services) demonstrate today that it meets a particular quality standard for voice services not yet offered, at locations where [Viasat] does not have customers, would fly in the face of the Commission’s admonition that states may not require supported services be provided prior to obtaining an ETC designation”). It is troubling to say the least that Viasat appears to consider compliance with standards critical to offering voice telephony service to actual consumers as essentially “something to figure out later,” rather than critical to a determination of whether it can offer what is in fact *the* supported service – voice telephony.